IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14625 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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DHARMENDRASINH AMUBHA JADEJA & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PREMAL R JOSHI for Petitioner(s) : 1 - 5.
MR. K.L.PANDYA, AGP for Respondent(s) : 1-2

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 22/08/2006

ORAL JUDGMENT

1. **RULE**. Mr. K.L.Pandya, learned AGP appears and waives service of notice of Rule on behalf of Respondent Nos. 1 and 2.
2. By instant Petition under Articles 226/227 of the Constitution of India, Petitioners seek to challenge the order dated 25.4.2006 rendered in Civil Misc. Application No. 1077 of 2005 by the learned Presiding Officer, Fast Track Court No.2, Rajkot, by which the application filed by the Petitioners under Section 5 of the Limitation Act, 1963 (“the Act” for short) seeking condonation of delay caused in filing Regular Civil Appeal against the judgement and decree dated 10.8.2001 rendered in Regular Civil

Suit No. 1699 of 1995 by the learned 7th Joint Civil Judge (SD), Rajkot has been dismissed.

3. The Petitioners have filed Regular Civil Suit No. 1699 of 1995 against the Respondents in the Court of learned Civil Judge (SD), Rajkot for declaration and permanent injunction to the effect that land bearing survey no. 46/2 admeasuring 3 acres, 22 gunthas of village Vavdi, Taluka and District Rajkot is of the ownership of the Petitioners. The learned 7th Joint Civil Judge (SD), Rajkot by impugned judgement and decree dated 10.8.2001 has dismissed the Suit. The Petitioners could not move the higher forum immediately because of the financial crunch and because of the fact that the Petitioner No.5 who is power of attorney holder was serving in Surat as a Driver in Gujarat State Road Transport Corporation.
4. The Petitioners therefore filed Civil Misc. Application No. 1077 of 2005 before the District Court, Rajkot seeking condonation of delay of 4 years 2 months caused in filing the Regular Civil Appeal, on the grounds stated in the application.
5. The learned Presiding Officer, Fast Track Court No.2, Rajkot, by impugned judgement and order dated 25.4.2006 has been pleased to dismissed the said application, giving rise to the present Petition.
6. This Court has considered the submissions advanced by Mr. Premal Joshi, learned advocate

of the Petitioners, Mr. K.L.Pandya, learned AGP for Respondent Nos. 1 and 2 and perused the impugned order and also considered the celebrated principle governing the discretionary exercise of powers conferred under Section 5 of the Act the reported decisions of the Supreme Court, construing Section 5 of the Act liberally.

7. The question of condonation of delay has to be decided having regard to the principles laid down by the Supreme Court in **(i)** State of Bihar & others v. Kamleshwar Prasad Singh & another, 2000 AIR SCW 2388 (para 11 to 14 of the reported judgement, **(ii)** N.Balakrishnan v. M.Krishnanmurthy, Judgement Today 1998 (6) SC 242, **(iii)** State of Haryana v. Chandra Mani & others, AIR 1996 SC 1623, **(iv)** Spl. Tehsildars, Land Acquisition, Kerala v. K.V.Ayisumma, AIR 1996 SC 2750, **(v)** Punjab Small Industries and Export Corporation Ltd. and others v. Union of India and others, 1995 Suppl. (4) SCC 681, **(vi)** P.K.Ramchandran v. State of Kerala & another (1997) 7 SCC 566 and **(vii)** Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353 and other relevant decisions on the point.

8. So far as the ground seeking condonation of delay is concerned, according to the Petitioners, Petitioner Nos. 1, 2 and 3 are the agriculturists and they do not know about the legal proceedings. The Petitioner No.4 is of about 76 years of age. Considering the aforeaid

aspect, the power of attorney was given to Petitioner No.5 to take action in the matter. However, there was personal difficulty with Petitioner No.5.

9. Applying the principle laid down by the Supreme Court in above referred to judgements, to the facts of the present case, this Court is satisfied that sufficient cause is made out by the Petitioners for condonation of delay. The record does not indicate that there was any inaction or negligence on the part of the Petitioners in prosecuting the appeal. The explanation for delay offered by the Petitioners is not only plausible but acceptable and, therefore, according to this Court, the order which is impugned, refusing to condone the delay in filing the Civil Appeal, deserves to be quashed and set aside by allowing this Petition and thereby condoning the delay as prayed for.

10. For the foregoing reasons, the Petition succeeds and accordingly it is allowed. The order dated 25.4.2006 rendered in Civil Misc. Application No. 1077 of 2005 by the learned Presiding Officer, Fast Track Court No.2, Rajkot, refusing to condone the delay, is hereby quashed and set aside, result of which is that Civil Misc. Application No. 1077 of 2005 is hereby allowed and the delay caused in filing the Regular Civil Appeal is hereby condoned. The learned District Judge, Rajkot is hereby directed to accept the Regular Civil Appeal filed by the Petitioners along with Civil Misc. Application No. 1077 of

2005, by giving it a regular number and thereafter decide the same in accordance with law.

Rule is made absolute. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*